



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-22-CRM-0114

For: Violation of Section 3(e) of
R.A. No. 3019, as amended

SB-22-CRM-0115

For: Malversation of Public Funds

SB-22-CRM-0116

For: Malversation of Public Funds or
Property through Falsification of
Public Documents

- versus -

MATEO G. MONTAÑO, ET AL.
Accused.

Present:

FERNANDEZ, SJ, J.,
Chairperson,
VIVERO, and
MORENO,* JJ.

Promulgated:

15 APR 2024

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RESOLUTION

FERNANDEZ, SJ, J.:

This resolves the following:

1. *Motion for Leave to File Demurrer to Evidence*¹ filed by accused Leonila M. Hayahay;
2. *Motion for Leave to File Demurrer to Evidence*² filed by accused Joselita G. Enciso and Deseree D. Fajardo;
and

* In view of the inhibition of J. Miranda (per Administrative Order No. 136-2022 dated June 20, 2022)

¹ Dated March 22, 2024 and filed on even date

² Dated March 25, 2024 and filed by registered mail on even date

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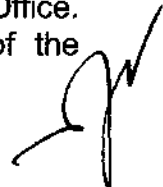
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3. The prosecution's *Consolidated Comment/Opposition* (*Re: Motions for Leave to File Demurrer to Evidence*).³

In her Motion, accused Hayahay prays that the Court grant her leave to file her demurrer to evidence, and that she be allowed to file the same within 10 days from notice. She avers:

1. The prosecution failed to prove her guilt beyond reasonable doubt in these cases. If allowed to submit her demurrer to evidence, she will detail the grounds for the dismissal of the charges against her.
2. In SB-22-CRM-0114, the prosecution's evidence failed to establish the essential elements of Violation of Sec. 3(e) of Republic Act No. 3019. The prosecution failed to prove beyond reasonable doubt that she took advantage of her official position, and that she acted with manifest partiality, evident bad faith or gross inexcusable negligence in the discharge of her functions, particularly in processing the release of Rep. Paul R. Daza's Priority Development Assistance Fund (PDAF) to the Economic and Social Cooperation for Local Development Foundation, Inc. (ECOSOCFI).
 - a. The prosecution did not establish what duty or function she took advantage of. The government circulars cited by the prosecution did not apply to her position, to the Department of Social Welfare and Development (DSWD), or to ECOSOCFI.
 - b. The prosecution failed to prove any specific instance where she acted with manifest partiality, evident bad faith, or gross inexcusable negligence.
 - c. The prosecution's evidence was offered to prove that ECOSOCFI did not actually conduct the PDAF-funded programs in specific localities. But as the DSWD Chief Accountant, she was not required to validate the same. Thus, the prosecution's evidence is irrelevant to the charges against her.
 - d. The prosecution's evidence did not disprove the existence of the subject PDAF-funded project. The prosecution presented municipal social welfare and development officers (MSWDO) to testify on a project undertaken by the national government through the DSWD Central Office. Furthermore, the testimonies and certifications of the

³ Dated April 1, 2024 and filed on even date,



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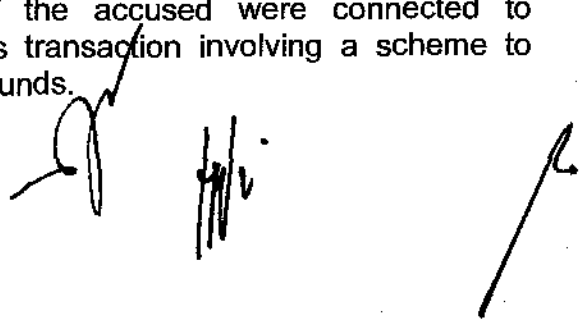
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barangay chairpersons have no bearing because most of them were not even incumbent officers at the time of the implementation of the subject project, and their certifications were not based on records from the years material to the alleged offenses.

- e. The prosecution failed to prove that DSWD Secretary Esperanza I. Cabral did not approve the subject Memorandum of Agreement (MOA). It did not present Sec. Cabral. Neither did it present a credible witness or any documentary evidence to show that the project was unauthorized.
3. In SB-22-CRM-0115 and 0116, the prosecution's evidence did not prove that she took, misappropriated, consented, or through abandonment or negligence, permitted accused Roberto M. Solon of the ECOSOCFI to take or misappropriate the amounts released through Disbursement Vouchers No. 08-03-03724 and 08-04-04225.
 - a. The prosecution failed to establish the specific duty or function she took advantage of, or in which she had been remiss.
 - b. The prosecution failed to present relevant and competent evidence to disprove the implementation of the PDAF-funded program.
 - c. The prosecution failed to present Sec. Cabral to prove that she did not approve the said project.
 4. The prosecution's evidence did not establish by the requisite quantum of proof that she conspired with her co-accused to commit the offenses charged.

In their Motion, accused Enciso and Fajardo similarly pray that they be granted leave to file their demurrer to evidence within 10 days from notice. They aver:

1. The prosecution failed to adduce evidence to prove the existence of conspiracy.
2. Conspiracy is not presumed. The prosecution failed to show (a) the community of criminal design of the accused before, during, and after the commission of the crimes charged; and (b) how the relationship and acts of the accused were connected to accomplish an anomalous transaction involving a scheme to misappropriate the PDAF funds.



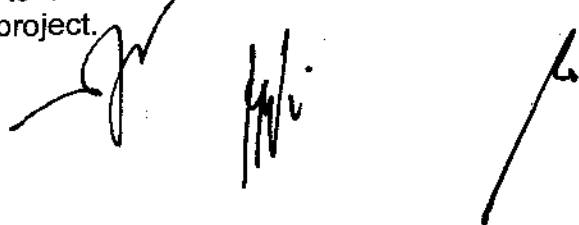
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3. The prosecution failed to prove beyond reasonable doubt all the elements of Violation of Sec. 3(e) of Republic Act No. 3019 in SB-22-CRM-0114. It failed to prove that they conspired and acted with manifest partiality, evident bad faith and/or inexcusable negligence in allegedly giving unwarranted benefits to accused Solon.
 - a. The prosecution failed to adduce evidence to show how they acted with manifest partiality, evident bad faith or gross inexcusable negligence in their acts of signing and countersigning the checks.
 - b. They followed the applicable guidelines of the DSWD and the COA. The government circulars presented by the prosecution do not apply.
 - c. The prosecution failed to prove that ECOSOCFI did not actually implement the project. Even assuming that the project was not implemented, they cannot be held liable because their acts were limited to signing and countersigning the checks.
 - d. The testimonies of the barangay captains are irrelevant because most of them were not incumbent at the time of the alleged transaction, or they had no personal knowledge of the transaction.
 - e. The testimonies and evidence provided by the MSWDOs are likewise irrelevant because the project is with the DSWD Central Office.
 - f. The prosecution failed to prove that DSWD Secretary Cabral did not approve entering into a MOA with ECOSOCFI. It did not present Sec. Cabral as a witness.
4. The prosecution failed to prove beyond reasonable doubt all the elements of Malversation in SB-22-CRM-0115.
 - a. There is no evidence to show that they took or misappropriated any fund, or that they benefited from the PDAF transactions. The prosecution's evidence shows that funds were transferred to ECOSOCFI as the Social Welfare and Development Agency (SWDA).
 - b. No evidence was presented to show that they took advantage of their positions in allegedly misappropriating government funds.
 - c. The prosecution failed to show that ECOSOCFI did not actually implement the project.



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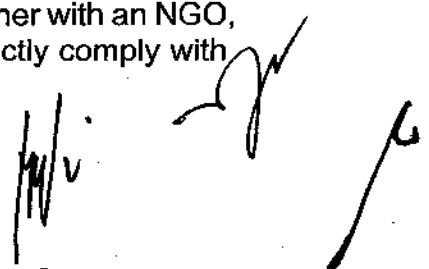
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5. The prosecution failed to prove beyond reasonable doubt all the elements of Malversation through Falsification in SB-22-CRM-011[6].
 - a. The prosecution failed to provide sufficient evidence to prove the alleged misappropriation through falsification, and that they had any hand in the said falsification. There is no evidence of the taking and misappropriation, or that they benefited from the PDAF transactions.
 - b. They were never identified as the ones who falsified the documents presented by the prosecution.
 - c. The prosecution failed to provide proof that ECOSOCFI did not actually implement the project.

In its *Consolidated Comment/Opposition*, the prosecution counters:

1. The prosecution presented sufficient evidence to prove all the essential elements of Violation of Sec. 3(e) of Republic Act No. 3019 in SB-22-CRM-0114.
 - a. The first element is present. The parties' stipulations, and the Personal Data Sheets and Service Records of accused Mateo G. Montaña and Violeta A. Cruz would show that at the time material to these cases, accused Montaña, Hayahay, Enciso, Fajardo, and Cruz were public officers at the DSWD, discharging administrative and/or official functions. On the other hand, accused Solon, a private individual, acted in conspiracy with the accused public officers.
 - b. The second element is present. The accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence.
 - i. The amount of PHP 5 million that the accused public officers released to accused Solon was sourced from Rep. Daza's PDAF for the Fiscal Year 2008. The 2008 General Appropriations Act (GAA) did not include non-governmental organizations (NGOs) as implementing parties for PDAF projects. Hence, the accused had no legal basis for the transfer of the subject PDAF to ECOSOCFI.
 - ii. Assuming that the DSWD could partner with an NGO, the accused were duty-bound to strictly comply with



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the prevailing COA issuances pertaining to the management and utilization of the PDAF. The prosecution's evidence would show that the selection of ECOSOCFI, the MOA dated March 25, 2008, and the release of the funds to ECOSOCFI were done in flagrant disregard of the provisions of COA Circular No. 2007-001 dated October 25, 2007.

- iii. No eligibility check was conducted prior to ECOSOCFI's accreditation. Accused Solon declared Mandaluyong City as ECOSOCFI's principal address but the documents do not show that ECOSOCFI was registered and authorized to do business in Mandaluyong City. Moreover, an ocular inspection of ECOSOCFI's office in Mandaluyong City, and the verification from the Business Permits and Licensing Department of Mandaluyong City conducted by the COA would establish that ECOSOCFI did not operate in Mandaluyong City. The majority of ECOSOCFI's board of trustees also denied transacting with the DSWD and Rep. Daza involving any project using the PDAF, or authorizing Solon to represent the NGO to transact with DSWD and/or Rep. Daza.
- iv. ECOSOCFI's financial statements and Treasurer's Affidavit failed to show that ECOSOCFI's financial condition was stable. The records also failed to include the list of projects previously undertaken by ECOSOCFI.
- v. The project proposal did not include the specific objectives, target beneficiaries, feasibility studies, risk assessment and plans for carrying out the project.
- vi. Accused Montaña, Hayahay, Fajardo, and Enciso permitted the releases of the funds to ECOSOCFI and accused Solon on the basis of the MOA, which was not signed by DSWD Sec. Cabral.
- vii. Despite the foregoing irregularities, accused Montaña signed the MOA as a witness, certified in the Obligation Request that expenses were necessary, lawful, and incurred under his direct supervision, and approved DV No. 08-03-03724 covering the first tranche in the amount of PHP 1.5 million.



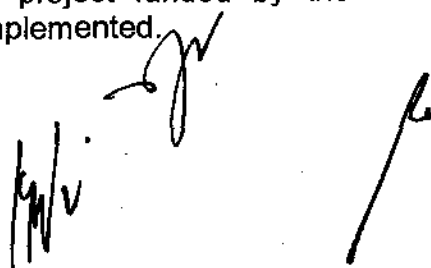
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- viii. Accused Hayahay, as Chief Accountant, failed to check and review the completeness of the supporting documents. She certified as to the completeness of the documents despite the absence of Sec. Cabral's signature in the MOA.
- ix. Accused Enciso and Fajardo failed to notify their superior officer of the illegality of the payment. Instead, they proceeded to sign LBP Check No. 792856 dated March 28, 2008 in the amount of PHP 1.5 million.
- x. Assuming that the MOA was valid and binding, accused Montaña, Hayahay, Enciso, Fajardo, and Cruz are still liable for facilitating the release of the second tranche of the PDAF in the amount of PHP 3.5 million to accused Solon.
- xi. The Liquidation Report submitted by accused Solon had no pictures of the project accomplishment and certificates of receipt by the supposed beneficiaries.
- xii. There was no way to verify and validate the existence of the project and the identity of the beneficiaries. Furthermore, there was no Fund Utilization Report of the previous release as certified by ECOSOCFI's accountant and approved by its president/chairperson. The Certification of Inspection Report issued by accused Cruz had no supporting documents to validate the implementation of the project.
- xiii. The MSWDOs and punong barangays of the barangays where the purported beneficiaries reside attested to the non-implementation of any livelihood/capital assistance project in the 1st District of Northern Samar. Their certifications corroborate the COA's validation as to the non-existence of the alleged 30 beneficiaries.
- xiv. Notwithstanding the falsified documents submitted by accused Solon, accused Montaña, Hayahay, Enciso, Fajardo, and Cruz still facilitated the release of the second tranche of the PDAF to accused Solon.
- xv. The second tranche remains unliquidated. This bolsters the fact that the project funded by the subject PDAF was never implemented.

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c. The third element of violation of Sec. 3(e) of Republic Act No. 3019 is present.

i. The prosecution's evidence would show that the accused public officers facilitated the processing, disbursement, and release of Rep. Daza's PDAF in the total amount of PHP 5 million to ECOSOCFI despite the irregularities.

ii. The MSWDOs of the 1st District of Northern Samar and the various punong barangays of the barangays where the alleged beneficiaries reside categorically certified to the fact of non-implementation of any livelihood/capital assistance project in the 1st District of Northern Samar. The punong barangays also testified that the named beneficiaries are not residents, or are unknown in their barangays.

iii. Public funds were disbursed and embezzled. Hence, the government suffered undue injury in the amount of PHP 5 million.

iv. The accused public officers' acts and omissions also gave accused Solon and ECOSOCFI unwarranted benefits, advantage, or preference.

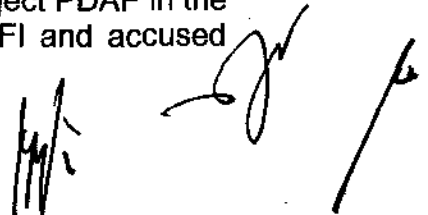
2. The prosecution presented sufficient evidence to prove all the essential elements of Malversation of Public Funds in SB-22-CRM-0115

a. The first element is present. The accused were public officers in various capacities at the DSWD at the time material to the allegations in the Amended Information.

b. The second element is present. Accused Montaña, Hayahay, Enciso, and Fajardo had custody and control of the subject PDAF. They were the authorized signatories to the DVs and checks. No payment could be effected in the absence of their signatures and approval in the DVs and checks.

c. The third element is present. There is no dispute that the subject funds were sourced from Rep. Daza's PDAF for the Fiscal Year 2008. Thus, the subject funds were public in character for which the accused were accountable.

d. The fourth element is present. Accused Montaña, Hayahay, Enciso, and Fajardo facilitated the disbursement and release of the first tranche of the subject PDAF in the amount of PHP 1.5 million to ECOSOCFI and accused



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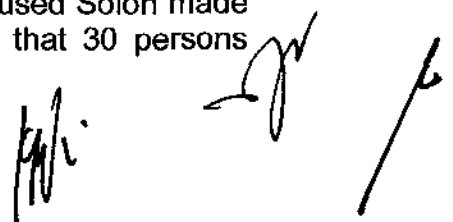
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Solon despite the irregularities. Accused Cruz issued the Certification of Inspection Report, certifying the completion of the project covered by the first tranche, when in truth and in fact, ECOSOCFI did not implement any project in the 1st District of Norther Samar and the persons who allegedly benefited from the supposed livelihood projects were fictitious. The accused public officers allowed accused Solon to take possession of the said public funds.

3. The prosecution adduced sufficient evidence to prove all the essential elements of Malversation of Public Funds through Falsification of Public Documents in SB-22-CRM-0116.
 - a. As in SB-22-CRM-0115, the first, second, and third elements of Malversation of Public Funds are present in SB-22-CRM-0116. Accused Montaña, Hayahay, Enciso, Fajardo, and Cruz were public officers in various capacities at the DSWD, while accused Solon acted in conspiracy with them. Accused Montaña, Hayahay, Enciso, and Fajardo were accountable officers having custody and control of the subject funds, which were public in character, having been sourced from Rep. Daza's PDAF for the Fiscal Year 2008.
 - b. The fourth element is also present. Accused Montaña, Hayahay, Enciso, Fajardo, and Cruz facilitated the disbursement and release of the second tranche of the subject PDAF in the amount of PHP 3.5 million to ECOSOCFI and accused Solon despite the irregularities. They allowed accused Solon to take possession of, and thereafter, embezzle, misappropriate, or otherwise appropriate for his own use the PDAF-drawn public funds, instead of implementing the supposed PDAF-funded project, which turned out to be non-existent.
 - c. The elements of Falsification under Art. 172 (1), in relation to Art. 171 (2) of the Revised Penal Code are present.
 - i. The first element is present. Accused Solon is a private individual, being then the Executive Director of ECOSOCFI, an NGO.
 - ii. The second element is present. Accused Solon prepared, submitted, and made use of falsified documents to liquidate the first tranche of the subject PDAF and to facilitate and ensure the release of the second tranche in the amount of PHP 3.5 million.
 - iii. The third element is present. Accused Solon made it appear in his liquidation report that 30 persons



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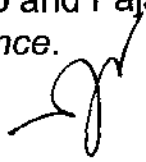
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participated and benefited from the purported livelihood/capital assistance project funded by the first tranche of the subject PDAF, when in truth and in fact, no project was implemented. As a result, the second tranche in the amount of PHP 3.5 million was released and paid to him, and such amount remains unaccounted for.

4. There was conspiracy among the accused in the perpetration of the crimes charged.
 - a. Conspiracy need not be shown by direct proof of an agreement of the parties to commit the crime. It can be inferred from the accused's acts which clearly manifest a concurrence of wills, a common intent or design to commit a crime. When there is a conspiracy, all who participated in the commission of the offense are liable as principals, regardless of the extent and character of their participation because the act of one is the act of all.
 - b. In the present case, the crimes of Violation of Sec. 3(e) of Republic Act No. 3019, Malversation of Public Funds, and Malversation of Public Funds through Falsification of Public Documents would not have been accomplished without the individual acts of the accused in the unlawful disbursement and release of the subject PDAF.
 - c. The accused's combined acts, though apparently independent, were connected and cooperative, indicating a closeness of personal association or a concurrence of sentiment, indubitably pointing to a joint purpose, a concert of action, or a community of interest.
 - d. The accused's acts reek of conspiracy to cause undue injury to the government and to give accused Solon and ECOSOCFI unwarranted benefits, advantage, or preference through evident bad faith, manifest partiality, or gross inexcusable negligence, and to take and malverse public funds through falsification of public documents in the amount of PHP 5 million.

THE COURT'S RULING

The Court resolves to deny accused Hayahay and accused Enciso and Fajardo's respective *Motions for Leave to File Demurrer to Evidence*.



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In *Bernardo v. Court of Appeals*,⁴ it was held that trial courts are given the discretion to grant leave to an accused to file a demurrer. The purpose is to determine whether an accused, in filing a demurrer, is merely stalling the proceedings. *Viz.:*

In fine, under the new rule on demurrer to evidence the accused has the right to file a demurrer to evidence after the prosecution has rested its case. If the accused obtained prior leave of court before filing his [or her] demurrer, he [or she] can still present evidence if [the] demurrer is denied. However, if [the accused] demurs without prior leave of court, or after his [or her] motion for leave is denied, [the accused] waives his [or her] right to present evidence and submits the case for decision on the basis of the evidence for the prosecution. *This power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court. The purpose is to determine whether the accused in filing [a] demurrer is merely stalling the proceedings.*

(emphasis supplied)

After examining the prosecution's evidence and the parties' arguments, the Court rules that granting accused Hayahay and accused Enciso and Fajardo leave to file their respective demurrers to evidence will merely delay the proceedings.

ACCORDINGLY, accused Hayahay and accused Enciso and Fajardo's respective *Motions for Leave to File Demurrer to Evidence* are hereby **DENIED** for lack of merit.

As provided in Rule 119, Sec. 23⁵ of the Rules of Court, they may adduce evidence in their defense, or in the alternative, they may file their respective demurrers to evidence without leave of court.

The said accused are given five days from receipt of this Resolution to file their manifestation, by personal filing or registered

⁴ G.R. No. 119010, September 5, 1997

⁵ **Sec. 23. Demurrer to evidence.** – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

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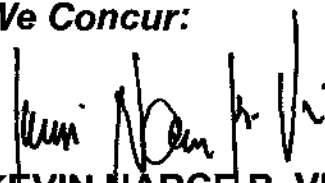
mail, and electronically, to inform this Court whether they are submitting their demurrers to evidence without leave of court.

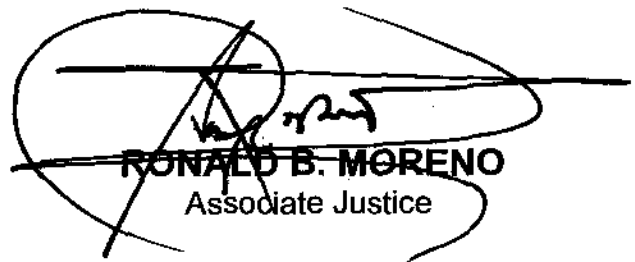
The trial dates previously set are maintained. The scheduled hearings will be considered cancelled upon receipt by this Court of the said accused's manifestation that they intend to submit their demurrer to evidence without leave of court.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KEVIN NARCE B. VIVERO
Associate Justice


RONALD B. MORENO
Associate Justice